

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**AUG 17 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

E&J GALLO WINERY,

Plaintiff - Appellant,

v.

BLUE RIDGE DISTRIBUTING CO.,  
INC.,

Defendant - Appellee.

No. 04-16474

D.C. No. CV-03-06472-AWI

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Argued and Submitted May 16, 2006  
Submission Withdrawn June 20, 2006  
Resubmitted July 14, 2006  
San Francisco, California

Before: KOZINSKI and FISHER, Circuit Judges, and BLOCK\*\*, Senior Judge.

The district court's extensive order granting summary judgment to Blue Ridge Distribution Company, denying summary judgment to E & J Gallo Wineries

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\*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\*The Honorable Frederic Block, Senior United States District Judge for the Eastern District of New York, sitting by designation.

and dismissing without prejudice Gallo's action for declaratory relief is affirmed for the reasons stated by the district court. In holding that this matter is not yet ripe for adjudication, we rely in part on Blue Ridge's counsel's candid representations to the court during oral argument before us that Blue Ridge: (1) had no present intent to transfer the Gallo wine distribution business to a third party (or to assign the Gallo contract); (2) had no present intent to bring its own declaratory judgment claim in North Carolina; and (3) would give Gallo notice of any intent to transfer, so that Gallo would have an opportunity to seek declaratory relief in an appropriate forum (i.e., either the Eastern District of California under the terms of the Agreement or North Carolina under the terms of the Wine Act). Because we hold the controversy is not ripe, we need not reach the mootness issue.

**AFFIRMED.**